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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DIANNA JOU, on behalf of herself and all
others similarly situated,
Plaintiff,

v.

**KIMBERLY-CLARK CORPORATION;
KIMBERLY-CLARK WORLDWIDE,
INC.; KIMBERLY-CLARK GLOBAL
SALES, LLC; and DOES 1-5.**

Defendants.

Case No. 3:13-cv-03075-JSC

**UPDATED JOINT CASE
MANAGEMENT STATEMENT**

Date: November 6, 2014
Time: 1:30 p.m.
Place: Courtroom F, 15th Floor
Judge: Magistrate Judge Jacqueline
Scott Corley
Complaint Filed: July 3, 2013

1 Plaintiff Dianna Jou and Defendants Kimberly-Clark Corporation, Kimberly-Clark
2 Worldwide, Inc., and Kimberly-Clark Global Sales, LLC (collectively, “Defendants” or
3 “Kimberly-Clark”), jointly submit the following Updated Case Management Statement, pursuant
4 to Local Rule 16-10(d).

5 **1. Jurisdiction and Service:**

6 (a) **Subject Matter Jurisdiction:** In its Order Granting in Part and Denying in
7 Part Defendants’ Motion to Dismiss (the “MTD Order”), the Court held that Plaintiff has
8 adequately alleged Article III standing, except insofar as she seeks to pursue injunctive relief.
9 (Dkt. 42 at 7 (granting Plaintiff leave to amend to add allegations in support of injunctive relief);
10 *id.* at 22 (“An amended complaint, if any, shall be filed no later than 30 days from the date of this
11 Order.”).) Plaintiff declined to amend her Complaint at this juncture.

12 Defendants reserve the right to renew their Article III arguments should discovery reveal
13 additional grounds to challenge Plaintiff’s standing to seek restitution and, by extension, this
14 Court’s subject matter jurisdiction.

15 (b) **Personal Jurisdiction and Venue:** This Court has personal jurisdiction
16 over the parties in this case because Plaintiff is a California citizen and chose to file suit in this
17 forum and because Defendants have consented to the personal jurisdiction of this Court. No
18 issues exist with respect to personal jurisdiction or venue.

19 (c) **Service:** Defendants have waived service of process. (Dkt. 7.) No parties
20 remain to be served.

21 **2. Facts:** Plaintiffs Dianna Jou and Jaynry Young,¹ both of whom are consumers
22 residing in California, filed the Complaint in the above-captioned action on July 3, 2013. (Dkt. 1-
23 1.) Plaintiffs allege they purchased Defendants’ Huggies® Pure & Natural Diapers and
24 Huggies® Natural Care Baby Wipes (collectively, the “Products”), which Defendants
25 manufacture, market, and distribute to retailers nationwide for sale to consumers. Plaintiffs allege
26

27 ¹ As discussed below, Plaintiff Jaynry Young filed a stipulation voluntarily dismissing her
28 claims with prejudice on July 31, 2014 (Dkt. 54).

1 Defendants represent that the Products are natural, environmentally sound, and safer alternatives
2 to traditional diapers and wipes, including traditional Huggies® brand diapers and wipes.
3 Additionally, Plaintiffs allege Defendants represent Huggies® Pure & Natural Diapers as a pure
4 and organic alternative to traditional diapers.² However, according to Plaintiffs, these
5 representations are untrue. Plaintiffs allege that these deceptive representations have caused
6 injury to Plaintiffs and the proposed class. After the MTD Order, Plaintiffs' remaining claims are
7 for: (1) violation of the Consumers Legal Remedies Act, Civ. Code § 1750 *et seq.* (the "CLRA");
8 (2) violation of the False Advertising Law, Bus. & Prof. Code § 17500 *et seq.* (the "FAL"); (3)
9 violation of the Environmental Marketing Claims Act, Bus. & Prof. Code § 17580 *et seq.*; and (4)
10 violation of the Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.* (the "UCL").

11 Factual issues in dispute include whether Defendants misrepresented and/or failed to
12 disclose material facts concerning Huggies® Pure & Natural Diapers and Huggies® Natural Care
13 Baby Wipes; whether Defendants' conduct was unfair and/or deceptive; and whether Plaintiffs
14 and the class members have sustained damages with respect to the statutory claims asserted, and
15 if so, whether damages are properly limited to initial product purchases.

16 **3. Legal Issues:** The legal issues involved in this case include: whether the product
17 packaging is likely to lead a reasonable consumer to believe the Products are made entirely of
18 natural materials; whether the putative class is adequately defined and ascertainable; whether the
19 putative class is so numerous that joinder is impracticable; whether there are questions of law or
20 fact common to the class; whether the claims of the named plaintiffs are typical of the claims of
21 the class and/or whether the named plaintiffs are subject to any unique defenses; whether the
22 named plaintiffs can adequately protect the interests of the class; whether common questions of
23 law and fact predominate; and whether a class action is the superior method for adjudicating this
24 dispute.

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26 ² In the MTD Order, the Court dismissed Plaintiffs' claims to the extent they allege that the
27 Huggies® Pure & Natural Diapers are likely to misrepresent to a reasonable consumer that they
28 are made entirely of organic cotton. (Dkt. 42 at 19.)

1 **4. Motions:** The Court granted in part and denied in part Defendants' Motion to
2 Dismiss on December 10, 2013. (Dkt. 42.) The Court granted the motion as to (1) Plaintiffs'
3 lack of standing to pursue injunctive relief (*id.* at 7); (2) Plaintiffs' claims to the extent they allege
4 that the diapers are likely to misrepresent to a reasonable consumer that the product is made
5 entirely of organic cotton (*id.* at 19); and (3) Plaintiffs' claim for alleged violations of the
6 Wisconsin Deceptive Trade Practices Act ("WDTPA"), Wis. Stat. § 100.18 (Dkt. 42 at 22).
7 Because the Court ruled that Plaintiffs failed to allege a claim under the WDTPA, it denied as
8 moot Defendants' argument that the putative nationwide class should be dismissed and/or
9 stricken from the Complaint. (*Id.* at 22 n.4.) The Court denied Defendants' Motion to Dismiss in
10 all other respects.

11 Plaintiffs anticipate filing a motion for class certification at the appropriate time.

12 Defendants will oppose any motion for class certification and also plan to file summary
13 judgment motions once sufficient discovery has been obtained.

14 As discussed in the Motion to Dismiss, although Plaintiffs have named Kimberly-Clark
15 Corporation and Kimberly-Clark Worldwide, Inc. as co-defendants, Defendants believe those
16 entities are improper parties to this suit. (Dkt. 8 at 1 n.1.) If necessary, counsel for Defendants
17 will move to dismiss the wrongly served parties at a later date.

18 **5. Amendment of Pleadings:** In the MTD Order, the Court ordered that "[a]n
19 amended complaint, if any, shall be filed no later than 30 days from the date of this Order." (Dkt.
20 42 at 22.) Plaintiffs elected not to file an amended complaint.

21 Plaintiffs expect to add parties if discovery reveals the identities of the "Does #1-5"
22 defendants who, along with the identified Defendants, Plaintiffs believe to be responsible for the
23 manufacture, marketing, and/or distribution of the Products. Plaintiffs may also add parties if
24 additional consumers contact them with respect to Defendants' conduct at issue.

25 **6. Evidence Preservation:** Plaintiffs have taken steps to preserve evidence relevant
26 to this action, including collecting documents in their possession and saving electronic
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documents. Additionally, on April 5, 2013, Plaintiffs sent to Defendants a letter reminding Defendants of their document and electronically stored information preservation requirements.

Defendants have used their best efforts to preserve any electronically stored information in their possession concerning the labeling of Huggies® Pure & Natural Diapers and Huggies® Natural Care Baby Wipes and the allegations contained in the Complaint.

7. Disclosures: On September 19, 2013, the parties held a conference pursuant to Federal Rule of Civil Procedure 26(f). On October 3, 2013, the parties conferred about additional discovery matters and exchanged initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1).

8. Discovery: Defendants filed an Answer to the Complaint on January 24, 2014 (Dkt. 43). The parties subsequently exchanged written discovery. The parties agreed that, due to the volume and complexity of documents requested by Plaintiffs, Defendants' production of documents would be conducted on a rolling basis. On May 21, 2014, and within the reciprocal response deadline agreed upon by the parties, Defendants served their Responses and Objections to Plaintiffs' Interrogatories and Requests for Production. Simultaneously, Defendants produced their first tranche of documents. Defendants will serve a second tranche of documents on or before November 6. Defendants also expect to produce a third and final tranche of documents.

On July 15, 2014, Defendants took the deposition of named plaintiff Dianna Jou. The next day, Defendants took the deposition of named plaintiff Jaynry Young. Ms. Young subsequently decided not to pursue her claims and, on July 31, 2014, filed a Stipulation of Voluntary Dismissal (Dkt. 54), which dismissed her claims with prejudice.

9. Class Actions: Plaintiffs propose that they file a motion for class certification pursuant to Federal Rule of Civil Procedure 23 after conducting appropriate discovery.

Defendants contend that numerous individualized issues will prevent class certification in this action.

10. Related Cases: There are no related cases.

1 **11. Relief:** At this juncture, Plaintiffs seek only monetary relief. Plaintiffs seek return
2 of the purchase price that they and other consumers paid for the Products. Plaintiffs will seek
3 attorneys' fees and costs at the appropriate time.

4 Defendants do not presently claim any damages but reserve the right to seek reasonable
5 attorneys' fees and costs at the appropriate time.

6 **12. Settlement and ADR:** All parties have complied with ADR L.R. 3-5. (Dkt. Nos.
7 17, 19, 20.) On September 25, 2013, the parties stipulated and agreed to participate in mediation
8 under ADR L.R. 6. (Dkt. 25.) The stipulation was so ordered on September 26, 2013. (Dkt. 26.)

9 On October 31, 2013, the Court appointed Timothy E. Carr as Mediator. (Dkt. 33.) On
10 November 21, 2013, the Court granted the parties' stipulation and request to extend the mediation
11 deadline under ADR L.R. 6-4 until February 24, 2014. (Dkt. 39.) The mediation hearing took
12 place on February 11, 2014. Prior to the mediation, the parties exchanged mediation briefs and
13 provided them to the Mediator in compliance with ADR L.R. 6-7. Named plaintiffs Dianna Jou
14 and Jaynry Young appeared on behalf of Plaintiffs, along with their counsel. Kimberly-Clark
15 associate general counsel Tricia Kinney appeared on behalf of Defendants, along with outside
16 counsel. Though the mediation was constructive, the parties determined that it was too early in
17 the case proceedings for viable settlement options to be negotiated.

18 **13. Consent to Magistrate Judge for All Purposes:** All parties have consented to
19 have a magistrate judge conduct all further proceedings, including trial and entry of judgment.

20 **14. Other References:** The parties do not believe the case is suitable for reference to
21 binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

22 **15. Narrowing of Issues:** After further discovery has been conducted, the parties will
23 be in a better position to determine, if necessary, whether issues can be narrowed by agreement or
24 motion.

25 **16. Expedited Schedule:** The parties do not believe this action should be handled on
26 an expedited basis with streamlined procedures.

1 **17. Scheduling:** Pursuant to the Court's Amended Pretrial Order (Dkt. 48), the
2 following deadlines have been entered in this case:

3 Factual Discovery Cut-Off: March 13, 2015
4 Motion for Class Certification Due: April 17, 2015
5 Initial Expert Disclosures Due: April 17, 2015
6 Deadline to Depose Plaintiffs' Experts: June 19, 2015
7 Opposition to Class Certification Due: July 24, 2015
8 Defendants' Expert Disclosures Due: July 24, 2015
9 Deadline to Depose Defendants' Experts: September 25, 2015
10 Class Certification Reply Brief Due: October 23, 2015
11 Class Certification Hearing: November 19, 2015
12 Deadline to File Dispositive Motions: November 20, 2015
13 Oppositions to Dispositive Motions Due: December 18, 2015
14 Dispositive Motion Reply Briefs: December 29, 2015
15 Hearing on Dispositive Motions: January 21, 2016
16 Final Pretrial Conference: March 17, 2016
17 Jury Selection/Trial Date: April 4, 2016

18 **18. Trial:** Both parties have demanded a trial by jury on all claims so triable. The
19 parties expect that a trial would last two weeks.

20 **19. Disclosure of Non-party Interested Entities or Persons:** All parties have filed
21 the "Certification of Interested Entities or Persons" that Civil Local Rule 3-16 requires. (Dkt.
22 Nos. 11, 36.) Neither party knows of any interested entities other than the named parties in this
23 action.

24 **20. Other Matters:** The parties do not wish to raise any other matters.
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1 DATED: October 30, 2014

REESE RICHMAN LLP

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3 By: /s/ Kim E. Richman
KIM E. RICHMAN (*pro hac vice*)

4 *Attorneys for Plaintiffs*

5 DATED: October 30, 2014

KING & SPALDING LLP

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12 KIMBERLY-CLARK GLOBAL SALES, LLC
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